



REGULAR MEETING
PUBLIC EMPLOYEES' RETIREMENT BOARD

NOVEMBER 1, 2007

The regular meeting was called to order by Vice President John Paull at 8:30 a.m. Thursday, November 1, 2007. Roll call was taken with all members of the Board being present. Board members and staff present were:

Jay Klawon, President
John Paull, Vice President
Robert Griffith, Member
Troy McGee, Member
John Nielsen, Member
Terry Smith, Member
Roxanne Minnehan, Executive Director
Melanie Symons, Legal Counsel
Scott Miller, Legal Counsel
Anna Garza, Executive Assistant

OPEN MEETING

Jim Kembel, MACOP/MPPA; Marty Ludemann, Dick Lewis, Rusty Wickman, MACOP; Mark Horner, Bryan Lockerby, Tito Rodriguez and Ron Steffens, MPPA; Linda Ulrich and Ross Jensen, Great West Retirement Services; Ed Cleary, Doug Neil, Rick Ryan and Jack Trethewey, members of the Montana State Firemen's Association; Steve Bullock, Bullock Law Firm/MPPA; Joyce Klawon, Jay Klawon's wife; and Kim Flatow, Member Services Bureau Chief; Barb Quinn, Fiscal Services Bureau Chief; and Kathy Samson, DC/Education Services Bureau Chief, joined the meeting.

MINUTES OF OPEN MEETING

The minutes of the open meeting of September 13, 2007 were presented. Mr. Robert Griffith moved that the minutes of the previous open meeting be approved. Mr. John Nielsen seconded the motion. Upon being submitted to vote, the motion carried with five attending members voting aye. Mr. Jay Klawon abstained due to his absence from the September 13, 2007 meeting.

Public Comment – No public comment.

EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Executive Director

Informal Re-consideration – MPPA Request – Scott Miller

Mr. Stephen Bullock, attorney for the Montana Police Protective Association (MPPA) addressed the Board. Mr. Bullock stated that those working for State government are public employees and

the public has the right of access to information about those employees. Our constitution and our sunshine laws are without similar pattern anywhere else in the country. He stated that last year the Supreme Court explained that there is a constitutional presumption that all documents of every kind in the hands of public officials are amenable to inspection. Regardless of legislation, special exceptions are made to accommodate the exercise of constitutional police power and other competing constitutional interests. He stated it's really important that we appreciate what either court decisions or AG opinions have already said and held must be released: public employees name, title, date and duration of employment, salary, payroll information of private employees, personal information from payroll records of county employees including sick leave taken, other leave taken and overtime earned. He stated it's also important to recognize what can be received in other contexts even if you are not a public employee. He stated that he could go to the Secretary of State's office and request and receive your name, date of birth, mailing address, residential address, home telephone number, date you registered to vote and the last time you voted. He stated that as long as you are using the information to conduct research activities he could go to the Department of Justice Motor Vehicles Division and request an individual's name, address, date of birth, driver's license status, convictions and traffic accidents. He stated that in many respects if we look back to the June 12, 2007 letter that Mr. Bullock originally sent to the Executive Director requesting this information, they are asking for less information than is already available through court decisions, AG opinions or other statutes. He stated that he has tried to make it clear that they are not interested in receiving their names or their social security numbers; he is interested in their date of birth, gender, salary, pension and a number of other things. The Board's actuarial consultant has done a number of studies relating to the DROP program, which is what they are interested in. Mr. Bullock stated that ultimately concluding that even as presently structured, with the member contribution continuing throughout the DROP period and the member deriving no actual tangible benefit from that contribution, that the program is costing the plan money was part of the November 2, 2006 draft actuarial impact statement. Each study said that they are "not for the use or benefit of any third party for any purpose, any third party recipient of Milliman's work product who desires professional guidance should not rely on Milliman's product but should engage qualified professionals for advice appropriate to it's own specific needs". Mr. Bullock stated that on behalf of MPPA and its members, they made a request for information to do exactly that, to receive appropriate advice from a qualified professional. They want to have the opportunity to have an actuary analyze the assumptions and conclusions that have been reported to the Board as their fiduciary. He stated that the same practice for other lawyers holds for him as he represents clients, that if there is even a doubt about any recommendation or advice that he is giving that he would encourage someone, if they can, to go get a third party opinion. He stated that this actually makes their relationship better and it makes the advice that he gives that much more solid. As fiduciaries for the 580 members of the MPPA, they are also members of this retirement system, he stated that he would think that the Board would not only endorse but if possible within the constitution would do everything they can to encourage such a review. He stated that their attempt to do this is a hollow exercise if they are unable to provide the qualified professional with the basic information necessary to undertake the analysis. He stated that he appreciates that this has been formed in a constitutional framework, the potential right of privacy implicated and the merits of disclosure. Privacy concerns implicated are that there needs to be subjective or actual expectation of privacy that society would consider reasonable. He stated that as he earlier noted through AG opinions, legislation and judicial decisions, courts and legislature have already concluded that things like name, address and birth date are not identifiers that society would consider reasonable to protect and the rules change substantially when dealing with public employees. Mr. Bullock stated that he is not aware of any case where date of birth or gender was held to be information deserving of constitutional protection, especially where in this instance they

are not even asking for the names. They just want the data that supports. He stated that reading the presentation for the Board is that staff's logic is that because MPPA might be able to use gender and birth date to determine the identity of one or more of the 1,200 MPORS participants then they would learn the name and have access to the name tied to the salary, years of service, date of termination, pension benefit and as a result the members privacy interests would somehow be violated. He stated that even if MPPA could use the birth date and gender to identify that individual officer, the information that they are requesting about that individual officer is presumably public information anyway. He stated that there is some authority cited and the authority upon which staff relies does not necessarily support such a conclusion that this should be withheld. Mr. Bullock then referenced the case of Human Rights Division vs. Billings case. He stated that they are not seeking this type of information. He stated that there is one AG opinion which addresses the Board in whether the applications submitted to PERS can be public, but it wasn't about that application of the public employee it was about the third party beneficiary that might be listed on that application. This hinged upon disclosural privacy, which is an individuals ability to choose from self the time and circumstances under which his attitudes, beliefs, behavior and opinions are to be shared or withheld from others. He stated that here, at most, they are seeking the date of birth and gender of the beneficiary. He stated that one of his concerns if the Board denies their request for reconsideration, what privacy interests is the Board protecting? He stated that even if he could figure out the members name, the information that he would then have is all presumably public anyway. He stated that even if the Board were to determine that some privacy interest is implicated in some minimal way, the inquiry does not stop there. MPERA staff contends that merits of public disclosure to MPPA and its members is nonexistent or minimal based on the Boards actuary professional qualifications, the Board's actuary was subjected to a third party actuarial review that occurred two years prior to the time that this report was put out and there is a complete absence of any concern over this actuary by this Board. Finally the Board is constitutionally empowered to administer MPORS, specifically the actuarial aspects. He stated that he respectfully submits that that misses the mark; this is a case where an organization that represents 580 of the 640 active participants in the system are seeking information. He stated that even though the Board is constitutionally empowered to administer the actuarial aspects of the system it doesn't mean that the Board and the determinations are beyond any sort of review. He stated that making this request in questioning the structure of the DROP program, no one is saying that the Board or staff has done anything wrong. Their efforts are not to show the failings of the Board or it's staff, but to do as much as they can to assess the underlying assumptions that support the DROP program as it is structured, they would very much like to do so in a collaborative effort with the Board and remain hopeful that they can. He noted that if they can not that they probably would be filing an action to provide the information. He stated that he would appreciate the Board's careful and thoughtful consideration on this matter. He turned it over to a couple of officers to give testimony.

Mr. Rusty Wickman, the Chief of Police in Missoula addressed the Board. He stated that he has been a police officer for over 30 years and is also a DROP member. He stated that he would like to encourage the Board to work with them. He stated that recruitment for police is getting more difficult every year to find qualified people and retain qualified people as well. Programs like the DROP give them an attraction for people to want to be police officers. He stated that in the last few years they have had to assign a couple of people in the Missoula Police Department to do full time recruiting. He stated that big cities in the country it is not uncommon for them to have 200 to 300 openings that they can't fill. He stated that last summer their department experienced this for the first time; they had an opening and did not have anyone on their eligibility list to hire. These programs, the DROP bill and other retirement bills, are attracting some very good people. He

stated that this past week they interviewed 21 highly qualified people and a lot were commenting on their benefits. He closed that he would ask that the Board work with them, it is very important to the police officers in the state of Montana that they continue to provide them with good benefits.

Tito Rodriguez, a Lieutenant with the Great Falls Police Department and a member of the Board of the MPPA was sworn in and addressed the Board. He stated that he has been with the Great Falls Police Department for 22 years. In those 22 years he has served the citizenry of Great Falls and Montana to the best of his ability. He stated that at the end of his career he is considering his options; does he stay as a police officer or try to find another position while he is young enough to find another position. Part of his consideration is his retirement account and whether he should enter the DROP or not. He stated that regarding the privacy of this information, the Board has been directed by their members to get this information so they can make their decisions. He stated that he appreciates the hard work of the Board and that they have done a very good job, but if they are protecting his information they don't have to.

Mr. Scott Miller addressed the Board. He stated that he agrees with Mr. Bullock that this is an interesting issue; he would also agree that much of the public employees' information is open. He stated that what they are looking for is information that is similar to information that a bank would hold or an insurance company as far as an annuity. It is similar to the Defined Benefit that you get through MPERA and through MPORS. He stated that yes, they would have the ability to go to a variety of places to get information on these individuals; however, they would not be able to go to these individuals' banks and get their bank account information, their bank account balance, how much they are getting for an annuity, how much that annuity cost, the Gramm-Leach-Bliley Federal Act prohibits the banks from disclosing the information without a release. That information is very similar to what we have here. They would also not be able to go to Blue Cross Blue Shield and find out any medical information on these individuals. As the Attorney General pointed out in the AG Opinion directly addressing the membership cards that are submitted to MPERA, that information is also protected. The possibility that there is information on those membership cards relating to disability and relating to third party beneficiaries is not something that society is willing to allow to have open. This is information that they are looking for. They are looking for beneficiary information, if someone is on a disability, what that disability amount was, when it started; this information is not open. Mr. Miller stated that he has not run across any precedent that allows this information to be open, HIPPA would protect this information. The information that they seek from us isn't their wages, what they are doing on their job, they are looking for information relating to monies that the state holds in trust and is administered by the Board for the exclusive benefit of those participants. He stated that the problem that he has with releasing that information with information that may provide identification, like the date of birth and gender, then they can take this information and compare this information to whatever list they have and determine that information, when this information, Mr. Miller believes, is not open. He stated that the Attorney General issued an opinion that we cannot release information on beneficiaries, which is also information that they are looking for. Mr. Miller stated that it seems a lot easier to go through a release process if they want this information. He stated that releasing that financial and beneficiary information without the releases he doesn't believe is something that the Board can do. Mr. Miller believes that there are privacy interests in the underlying pension information that these people seek. He does not think that the privacy goes to date of birth and gender, but when you combine that and provide identification information with the other private information, then we cannot release it. He stated that even the retirement dates compared with this information also provides identification information. Mr. Miller stated that his concern is the underlying information that they are looking for, the financial information, information on whether

it's a disability, whether it's a beneficiary and their date of birth, this is the information that Mr. Miller is concerned about and believes the Board needs to be concerned about. When you look at the demands of those privacy interests compared to what they are trying to do with the information, the merits of public disclosure, he believes the privacy interests outweigh those merits of public disclosure. He stated that we have a nationally known and respected actuary doing the work on our systems, we had that actuary's work audited by another well known actuary and the audit came away gleaming. Mr. Miller stated that this verifies the actuarial practice and process that our actuary uses and verifies that that process is accurate. This was the third party who verified our actuary's information that the MPPA would like to have done now. We had it done and there were no problems and there are no merits of public disclosure in this case.

The question was asked why the MPPA doesn't go through the release process. Mr. Bullock responded that in order to actually presumably do what Milliman does for the Board, not only would they have to go through their 580 members another 60 that aren't members that are actives and also the retired, terminated and vested, he does not know the names and even when they get the data from the Board they won't necessarily know the names of those people. One reason they do not go through the release process is the administrative difficulties of doing so. The other reason is that the constitution says that they are ultimately going to be able to get this information.

It was discussed whether there was enough data already out there to supply a potential police officer with enough information for him to make an educated decision. Mr. Bullock responded that without the data to crunch and to shape and to make those 580 members comfortable, he doesn't know that it would be a very good recruiting tool if a year from now a police officer figures out that he is losing money by entering into the DROP program, they cannot come up with this without the actual underlying data. Ms. Kim Flatow was asked if she would be able to give estimates if a police officer were to come to her for this information. She responded that she would be able to give potential benefit information five years into the future if she was supplied with potential salary increases over that time period.

It was discussed that some Board members would feel more comfortable if they were told by the Supreme Court that they could release this information or had releases signed by the members themselves.

Public Comment: No public comment.

Mr. Jay Klawon moved to uphold staff determination denying the disclosure of the information requested in paragraphs 3, 4 and 5 of the June 12, 2007 letter from Stephen C. Bullock because the members' privacy interests in that information outweighs the merits of public disclosure. Mr. John Nielsen seconded the motion. The motion carried 5 to 1. Mr. John Paull voted nay.

Non-Union Pay Plan – Scott Miller

Mr. Miller explained a couple of small changes that were made to the Pay Plan. There were three positions that were added to the plan: the Active Database Manager, the Executive Assistant and the Internal Auditor position. Ms. Minnehan explained that because the Active Database Manager and Executive Assistant positions were supervisory positions they were taken out of the Union and added to the Non-Union Pay Plan based on an understanding with the Union. The Internal Auditor is a new position that will report directly to the Executive Director and have the ability to report to the Board if necessary so it too will not be a Union position.

Public Comment: No public comment.

Mr. Jay Klawon moved that the Board adopt the proposed Policy Number Board Personnel 04, Non-Union Pay Plan Policy. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

Great Falls 125 Plan Audit Conclusions – Melanie Symons

Ms. Symons stated that we have come to the end of our first 125 Plan audit. The audit disclosed that Great Falls was in compliance with the exception of one individual who elected to have her 125 plan premiums taken from her pay after tax; despite this election the city treated the premiums as pre-taxed. Once the staff pointed this out the payroll clerk corrected the error and made the correction retroactive, our accountants are satisfied with the correction. Going forward there was an election window in May and June in Great Falls. The previously mentioned individual now has elected to have her premiums pre-tax. There is a question of whether the election window was proper. Her election was dated June 30. The state's election window in October is for plan starting in January, so there was a question whether this election was made at the appropriate time. Documentation from Great Falls indicates there is an annual enrollment window; however, it does not state when the window ends. Great Falls personnel recognize they need to identify the election window start and stop dates. Because of this recognition and their corrections being retroactive, Ms. Symons recommends that the Board find Great Falls to be in compliance.

Public Comment: No public comment.

Mr. Robert Griffith moved that the Board find Great Falls to be in compliance with the Board's "Treating Salary Deferrals under a Cafeteria Plan as Compensation" policy; and that the premiums paid pursuant to that policy be treated as compensation for retirement purposes. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

Board Elections – John Paull

Mr. John Nielsen made a motion to nominate Mr. Jay Klawon as President of the PERB. Mr. Robert Griffith seconded the motion. The motion carried 5 to 0.

Mr. Klawon took over as Chair of the Board meeting.

457 Settlement Award Distribution – Kathy Samson/Melanie Symons

Ms. Symons stated that they do not know who filed this lawsuit. This is a market timing lawsuit and as a result of the lawsuit our 457 plan was sent a check for a little over \$60K. The check came with information regarding disclosures and how the money should be distributed. This is a fund that, with EIAC's recommendation, the Board closed in 2000. We need to return the money to the people who were in the fund at the time the Board closed the fund. Most of those individuals are still participants. The fairest option would be to distribute the funds back to the existing members. Those who are no longer in our 457 plan will need to be found and sent a letter regarding this matter and decide how they would like to handle their portion. Ms. Symons stated that there are a lot of individuals that would have less than \$10 coming back to them. Under the guidelines received for distributing this money, we can forego distributing that money because the expense of finding them outweighs the amount due.

Public Comment: No public comment.

Mr. Robert Griffith moved that the \$60,794.35 SEC Fair Fund Distribution check be distributed to 457 Plan participants invested in the PBHG Emerging Growth fund on April 27, 2000; and that the amount be distributed based on the percentage of total PBHG Emerging Growth funds held in the participant's account on that date. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Mr. Robert Griffith moved that the funds distributed from the SEC Fair Fund Distribution check to current 457 Plan participants be credited to the individual participant's current 457 Plan funds on a pro rata basis. Mr. John Paull seconded the motion. The motion carried 6 to 0.

Mr. Robert Griffith moved that MPERA distribute only amounts in excess of \$10.00 to individuals who are no longer 457 Plan participants, retaining the smaller amounts in the 457 Plan for administrative expenses. Mr. John Paull seconded the motion. The motion carried 6 to 0.

MPORS Ordinance – Cut Bank transfer of Employer Credit – Scott Miller

Cut Bank had a local police retirement plan. They passed an ordinance to join the state Municipal Police Officers' Retirement System (MPORS). The actuary determined that they are better funded than MPORS. Under statute they are to be given an employer credit. Mr. Miller stated that we would like to give them the whole credit amount up front; however, Cut Bank is not in favor of this option due to budget issues. Mr. Miller discussed the other options that are available for using the credit.

Public Comment: No public comment.

Mr. John Nielsen moved that the Cut Bank Employer Credit be offset against all future required employer contributions until the credit is exhausted. Mr. John Paull seconded the motion. The motion failed 3 to 3. Mr. John Paull moved that the Cut Bank Employer Credit be offset against future required employer contributions for a period of at most five years. Mr. Robert Griffith seconded the motion. The motion carried 5 to 1. Mr. Terry Smith voted nay.

Draft Rule – Allow 1 for 5 Service Purchases with 457 transfers – Scott Miller

The Board was provided the draft rule to allow one for five service purchases with 457 funds in their packets. The Board previously approved amending Montana Administrative Rule 2.43.441 to allow the purchase of one for five service using deferred compensation monies.

Public Comment: No public comment.

Mr. Troy McGee moved that the Board approve the proposed amendment to Montana Administrative Rule 2.43.441, and direct staff to complete the adoption of this rule through the administrative rulemaking process. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

Admin/Recordkeeping Contract Addendum – Melanie Symons

The Board's agreement with Great West Retirement Services (GWRS) for Administration and Recordkeeping Services names Tim Jones as GWRS' agent for contract administration purposes.

The Board was notified at its August 2007 meeting that Mr. Jones accepted a new assignment with GWRS and Ms. Linda Ulrich would be replacing Mr. Jones as GWRS' agent. Due to this change in agent an addendum is required.

Public Comment: No public comment.

Mr. John Paull moved that the Board approve Addendum Number 1 to the Agreement for Administration and Recordkeeping Services. The Addendum reflects that GWRS' agent for contract administration purposes is now Linda Ulrich; and that Ms. Ulrich is subject to the same skills, qualifications and experience as the previous agent. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

Schedule Board Meetings – January, February, March

The Board meeting dates for the first quarter of 2008 were proposed as follows:

Thursday, January 10, 2008
Thursday, February 14, 2008
Thursday, March 13, 2008

Mr. John Nielsen moved to schedule the first quarter Board meeting dates as listed above. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

Board Education – Attorney/Client Role – Melanie Symons/Scott Miller

Mr. Miller defined who the "client" is referring to. In this case the client is the Board as a whole. The attorney represents the Board not the staff. Mr. Miller stated that the attorneys are able to go over the Executive Director's head and report directly to the Board if necessary. It was discussed that one attorney will represent MPERA's position on a case and the other attorney will represent the Board. They discussed the Ex Parte Law, which states that unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, which is the Board, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This law would be applicable as soon as we receive notice that an individual is filing a contested case. The attorneys proposed to add a column to the legal track report that would indicate which attorney would be representing the Board. There was also discussion of the "Chinese Wall", which refers to the separation of each attorney's information from the other attorney regarding a case.

Public Comment: No public comment.

FY 2008 Budget Status Report – Barb Quinn

The Board was provided a budget status spreadsheet in their Board packets. Ms. Quinn went over the spreadsheet with the Board, highlighting key areas of interest.

Expenses are paid as of September 30, 2007. 25% of the fiscal year has elapsed, which means that most expenses should be less than 25% expended. Ms. Quinn explained that some costs are fixed

and paid upfront and therefore are 100% expended. She stated that the overall budget looks good. Personal Services is 18.81% expended, Other Services are 12.39%, Supplies and Materials are 5.56%, Communications are 9.23%, Travel is 12.28%, Rent is 24.48%, Repairs and Maintenance are 14.42%, Other Expenses are 10.01%, overall the budget is 15.67% expended. Ms. Quinn stated that Defined Benefit expenses compared to the cap through September 30, 2007 are projected year to date \$372K under cap, which is better than what was budgeted, \$201K. She stated that we expect to be under 100% expended across all programs at fiscal year end.

Public Comment: No public comment.

MPERA Staffing – Roxanne Minnehan

Ms. Minnehan reported on the following MPERA positions:

1. Receptionist – filled October 15, 2007. Bridget Saravalli is the new receptionist. She has extensive experience in this field.
2. Administrative Support – filled October 22, 2007. Patty Rutherford is the new half time DC/Education Services Bureau administrative assistant. She is a working retiree.
3. IT Programmer – filled October 29, 2007. Philip Yauk is the new IT programmer. He is from Troy Michigan and has over 20 years of experience in IT.
4. Publications Specialist – filled in-house, will start November 5, 2007. Ann Reber is the new Publications Specialist. She is currently a Payroll Clerk at MPERA, which will now need to be filled. She has an English degree and is highly interested in computers and formatting. She has experience formatting forms for the Forms Committee.
5. Active Database Manager – filled in-house, will start November 5, 2007. Shelly Pardis is the new Active Database Manager. She is currently Active Database Support, which will now need to be filled. This position was posted externally and the interviews were completed this week.
6. Data Entry – Dee Feddes will be retiring December 1, 2007.
7. Auditor – the position was reclassified and will now report directly to the Executive Director and is capable of reporting to the Board if necessary. The recruitment process will be starting.
8. Executive Assistant Position – was removed from the Union October 1, 2007. Removal was based on the fact that this is a supervisory position that deals with confidential personnel issues.

Public Comment: No public comment.

SAVA Meeting Report – Roxanne Minnehan

Ms. Minnehan briefed the Board on the SAVA meeting. Mr. Dave Bohyer was first to speak. He provided a brief history of the state retirement systems. He reviewed the Principles and Guidelines adopted by SAVA last year and discussed current industry trends. Ms. Minnehan discussed the pros and cons of both the Defined Benefit and Defined Contribution Retirement Plans at the meeting. Mr. Dave Senn would like an in-depth study to re-design the Teachers Retirement System to a hybrid plan with both a DB and DC component. He talked about TRS Board Policy and recommended the Legislature develop a policy. Mr. Carroll South discussed that assets are not money in the bank and surpluses disappear more quickly than they arrive. He stated that historically they underperformed peers due to not having a real estate pool. Their target rate for

real estate is 8%, they are currently at 3%. Mr. Jerry Williams with MPPA discussed that they would like to change the definition of compensation. They would like to stop employee contributions during the DROP period. They are taking other actions to prove that employee contributions should not be made during this period. He mentioned that so far they have spent \$5,000 and expect to pay another \$20,000, which could be spent on charities. Mr. Doug Neil of the Montana Firemen's Association talked about FURS DROP, they have seen the difficulties with MPORS so are looking at possibly doing a PLOP instead. They would like to change the definition of compensation to include overtime. He also discussed that there are five members in FURS that do not have the GABA. Mr. Tom Bilodeau of MEA-MFT discussed their wishes to have an adequate income replacement for career employees. They like the guaranteed benefit and the guaranteed annual benefit adjustment. They also are requesting \$50M one time funding to pay off the ORP Plan Choice Rate for when the ORP was implemented when they exited the Teachers Retirement System. Sheryl Wood from MACO talked about how the increase in the employer contributions was a cost burden to the counties and that in order to meet this they have to decrease their services. She talked about that they should be able to hire working retirees. She also stated that the increase in employer contributions wasn't fair and equitable to everyone and the counties need additional funding. Mr. Leo Barry from AMPRE talked about taxation of PERS benefits at state level was a substantial decrease in benefits. There used to be an exclusion and removal of the exclusion was a substantial decrease in benefits to the retirees, GABA was supposed to make up for that loss. He requested a trigger to return the GABA to 3%. There were three written testimonies, which Ms. Minnehan discussed as well. The next SAVA committee meeting is scheduled for Friday, November 30, 2007.

Ms. Minnehan will be presenting at Board of Investments meeting on November 7, 2007. There was discussion that there will also be a Joint Issues Committee meeting on November 16, 2007.

Public Comment: No public comment.

Conference Report – NAGDCA:

Mr. Smith stated that it was his first NAGDCA conference. He felt it was a pretty good conference and well organized. The classes that they had available were extremely pertinent to the issues that are facing the DC community right now. He felt it was a very worth while experience for him as a Board member. The IRS had two sessions. Ms. Samson mentioned that the preconference was really interesting; it focused on education, retirement education and retirement planning. She stated that she brought back a number of ideas that she would like to work on implementing. Ms. Samson also discussed that she is on the Fees Task Force with NAGDCA.

Conference Report – NW Peers Conference:

The conference took place in Reno, NV this year. The conference includes management staff from Nevada, Washington, Oregon, Idaho and Montana. This is very beneficial because you interact with people that perform the same work as us. The conference is held every two years. MPERA is in line to host the next conference in September or October 2009. Ms. Symons stated that she felt that she gained a lot of information, particularly from listening to what the other states are doing moving forward and the legal issues that they are facing. Ms. Flatow mentioned that a lot of states are imaging, MPERA is the only system that is not imaging. She mentioned that our IT person went along as well and was able to network with other IT people and talk about different conferences and how to regenerate all the information in the case of a natural disaster, they

referenced New Orleans and how they were able to get things back up and running after Hurricane Katrina a couple of years ago. There was some discussion on what it would take to do imaging. Ms. Flatow mentioned that the other states are experiencing pretty much the same things that we are.

Board of Investments Update – John Paull

The Board of Investments meeting will take place on Tuesday and Wednesday, November 6th and 7th. State Street Bank will remain as the Custodial bank. Recent legislation passed, SB 467, which allows legislative liaisons - one from the senate and one from the house. The Senator appointed was Dan Weinberg from Whitefish and the Representative was Tom McGillvray from Billings. They will be non-voting members of the Board of Investments. There was some discussion regarding the controversy involved with appointing these legislators to be members of the Board of Investments.

Public Comment: No public comment.

Litigation Update – Melanie Symons and Scott Miller

Ms. Symons reported on the *Teichrow* case – The mediation for the Teichrow case will be taking place on November 6, 2007. Both parties agreed to postpone briefing of the issues at the Supreme Court. Ms. Symons will call or write a letter to inform the Board members of the mediation outcome.

Public Comment: No public comment.

Future Board Meetings – Thursday, January 10, 2008, Thursday, February 14, 2008 and Thursday, March 13, 2008.

Informational Summary Reports/Informational Items:

Included in the Board packets were the following reports and informational items:

- Next SAVA Meeting – November 30, 2007
- MANG Lawsuit – Reply Brief of Appellant
- Operational Summary Report – September FY 2008
- Operational Summary Report – August FY 2008

The following portion of the meeting relates to matters of individual privacy. The Board President determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.

SYNOPSIS OF THE CLOSED MEETING:

MINUTES OF CLOSED MEETING

The minutes of the regular closed meeting of September 13, 2007 were presented. Mr. John Paull moved to approve the minutes of the September 13, 2007 meeting. Mr. John Nielsen seconded the motion, which upon being submitted to vote, was duly carried with all five attending members voting aye. Mr. Jay Klawon abstained due to his absence from the September 13, 2007 meeting.

MINUTES OF THE SEPTEMBER 24, 2007 CLOSED BOARD TELECONFERENCE

The minutes of the special closed teleconference of September 24, 2007 were presented. Mr. John Paull moved to approve the minutes of the special meeting. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

MINUTES OF THE SEPTEMBER 28, 2007 CLOSED BOARD TELECONFERENCE

The minutes of the special closed teleconference of September 28, 2007 were presented. Mr. John Nielsen moved to approve the minutes of the special meeting. Mr. Troy McGee seconded the motion. The motion carried 5 to 0. Mr. Terry Smith abstained due to his absence from the September 28, 2007 teleconference.

Contested Cases

Informal Consideration – VFCA, Service Credit Appeal

Mr. John Paull recused himself due to working in the same fire department as the individuals in this case.

Mr. Scott Miller presented this case to the Board. On behalf of several volunteer firefighters, their attorney submitted a claim indicating that MPERA did not increase the retirement benefits of individuals who had retired prior to legislative action increasing retirement benefits for current active firefighters. Staff denied their claim based on 1) the fact that it is past the two year statute of limitations and 2) even if it weren't past the statute of limitations these legislative increases were not intended to benefit people who were retired at the time those enactments became effective. Their attorney also requested that we bypass the entire administrative process and go straight to district court. In order to do so there can not be any factual issues in conflict. Mr. Miller stated that at this point there are issues regarding years of service and dates of retirement that are significantly different than what we have on the system. Mr. John Nielsen moved to uphold staff determination denying the VFCA retirees' claims because those claims are barred by the two year statute of limitations and because the changes to section 19-17-404, MCA, only apply to those members who were not receiving retirement benefits as of the effective dates of the amendments to that section. He further moved that the Board uphold staff's decision to refrain from bypassing the administrative hearing process and proceed directly to District Court. Mr. Terry Smith seconded the motion. The motion carried 5 to 0. Mr. Paull abstained.

Informal Consideration – PERS, Reporting Error, FB

FB is requesting to purchase previous employment without any documentation of earnings. When FB inquired with her employer about finding the old payroll records, they could not find anything. MPERA's administrative rules require various documents in the event that there is no employer

certified records available. The Board members were provided in their packets documents regarding FB's employment, including various affidavits. Mr. Troy McGee moved that the Board grant the service purchase request for FB. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.

Informal Re-consideration – PERS, Reporting Error, RK

CW, the attorney for DOC was introduced to the Board members and staff. CW presented information regarding the employment of RK. For the first few years of RK's working career he did not pay into PERS. The Board waived some of the interest at the August meeting and DOC was supplied with a revised bill. CW stated that the last time before the Board, members expressed concern about the impact of waiving interest and what impact that would have on the trust. CW is suggesting that consideration must also be given to the beneficiary in this case as well as principles of equity and fairness. Mr. Klawon stated that he doesn't think that the Board has the latitude to forgive the interest, only the penalty. It was mentioned that the Board also has a policy that they will not charge less than eight percent interest. Mr. Robert Griffith moved to uphold the Board's decision on the reporting error of RK. Mr. John Nielsen seconded the motion. The motion carried 6 to 0.

Informal Re-consideration – MPORS, Disability Appeal, SH

SH came before the Board. After introductions, SH was sworn in and presented testimony. SH stated that he felt more of the pertinent information would have come from Dr. Cecil, so he drafted a letter and sent it to Ms. Linjatie. Dr. Cecil describes Post Traumatic Stress Disorder (PTSD). Mr. Klawon moved to approve request for duty related disability with annual review. Mr. John Nielsen seconded the motion. The motion carried 4 to 2. Mr. Troy McGee and Mr. Robert Griffith voted nay.

Informal Re-consideration – PERS, Disability Appeal, TM

TM was unable to attend the Board meeting. Additional medical information was received, which include records from Dr. Chamberlain and a neuropsychological summary from John R. Marion, PhD. TM underwent neuropsychological evaluation on August 24, 2007. During the evaluation was found to have impaired control and dexterity. The examining psychologist thought that he would have difficulty returning to his previous work. TM may have an organic brain syndrome due to previous episodes of hypoxemia. The Disability Examiner stated that in light of the additional medical information received, she agrees that TM is no longer able to perform the duties of the Psychiatric Aide position. She recommends the Board approve disability benefits without annual review. Mr. John Paull moved to approve request for disability benefits without annual review. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.

Retirement Report

- Disability Claims/Reviews:
 - AB has worked as an Emergency Services Dispatcher II. AB has been diagnosed with sleep apnea; chronic obstructive lung disease and chronic cough. Dr. McEvoy has reviewed her case and stated that he does not think AB can do usual work. The

Disability Examiner agrees with Dr. McEvoy that AB is unable to safely perform dispatcher services. Mr. John Nielsen moved to approve request for disability without annual review. Mr. John Paull seconded the motion. The motion carried 6 to 0.

- RK has worked as a Materials Laboratory Technician. RK has been diagnosed with small bowel cancer. Dr. McEvoy has reviewed the case and stated that he believes RK can no longer do usual work and no annual reviews are necessary. The Disability Examiner agrees that RK can no longer perform the duties of the position and recommends approval of disability benefits without annual review. Mr. Terry Smith moved to approve the request for disability without annual review. Mr. Robert Griffith seconded the motion. The motion carried 6 to 0.
- RM has worked as a Receptionist or Certified Nursing Assistant. RM has been diagnosed with rheumatoid arthritis, fibromyalgia with associated fatigue and sleep disturbance and left medial epicondylitis. Dr. McEvoy has reviewed the case and stated that he does not think that RM can do the usual receptionist work. The Disability Examiner stated that RM has been provided with an alternative light duty position as a Receptionist. Dr. McEvoy determined that RM is not able to perform receptionist duties. The job duties of a Nursing Assistant involve much heavier lifting, bending, standing and twisting. The Disability Examiner feels RM is disabled from both the Receptionist and Nursing Assistant jobs and recommends approval of disability benefits without annual review. Mr. John Paull moved to approve request for disability without annual review. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.
- SM has worked as a Control Operator. SM has been diagnosed with ankylosing spondylitis since 1968; post spinal cord fusion; type II diabetes. Dr. McEvoy has reviewed the case and stated that he does not think she can continue to work in the current job and that no annual review is necessary. The Disability Examiner agrees with Dr. McEvoy that SM's medical problems make SM unable to continue to work as a Control Operator. She recommends approval of disability benefits without annual review. Mr. Terry Smith moved to approve request for disability without annual review. Mr. John Paull seconded the motion. The motion carried 6 to 0.
- CR has worked as a Lead Custodian. CR has been diagnosed with multiple sclerosis. Dr. McEvoy has reviewed the case and stated that he believes CR is unable to do the usual work. The Disability Examiner agrees with Dr. McEvoy. She recommends approval of disability benefits without annual review. Mr. John Nielsen moved to approve request for disability without annual review. Mr. Terry Smith seconded the motion. The motion carried 6 to 0.
- SS has worked as a Detention Officer. SS has been diagnosed with post fusion at C4-5 and C5-6. Dr. McEvoy has reviewed the case and stated that SS was injured in an altercation with an inmate and soon afterwards was found to have herniated discs at C4-5 and C5-6. Dr. McEvoy does not believe SS can return to the usual work. The Disability Examiner agrees with Dr. McEvoy. She recommends approval without annual review. Mr. John Paull moved to approve request for duty related disability

without annual review. Mr. John Nielsen seconded the motion. The motion carried 6 to 0.

- MW has worked as a Facilities Maintenance Mechanic. MW has been diagnosed with degenerative joint and disc disease. Dr. McEvoy has reviewed the case and stated that he believes MW can no longer do the usual work. The Disability Examiner agrees and recommends approval of disability benefits without annual review. Mr. John Nielsen moved to approve request for disability without annual review. Mr. John Paull seconded the motion. The motion carried 6 to 0.
- Finalized Service Retirements Disability Benefit Payments

The Finalized Service Retirements/Disability Benefit Payments report was presented. Mr. Robert Griffith made a motion to approve the finalized service retirements and disability benefit payments. The motion was seconded by Mr. Troy McGee. The motion carried 6 to 0.

Contested Case/Litigation Updates – Melanie Symons/Scott Miller

Mr. Scott Miller reported on the *LGSD* – We are still looking at the information.

Mr. Scott Miller reported on the *RM* contested case – We are proceeding with the case.

Mr. Scott Miller reported on the *JK* contested case – We are proceeding with the case.

Mr. Scott Miller reported on the *MB* contested case – MB just appealed.

Ms. Melanie Symons reported on the *KI* contested case – KI appealed. Ms. Symons has not seen any written verification that KI has withdrawn but is assuming this will be the case from their conversations.

Ms. Symons reported on the *SW* case – SW appealed to District Court.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at approximately 2:15 p.m. The next regular meeting is scheduled for December 13, 2007, at 8:30 a.m. in Helena.

EXECUTIVE SESSION

The meeting went into executive session for the Board to conduct the Executive Director's performance appraisal.